IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 312 of 2007
With
CIVIL APPLICATION No. 1315 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NATIONAL INSURANCE CO. LTD. - Appellant(s)
Versus
MANABHAI BHURABHAI DAMOR & 3 - Defendant(s)

==========

Appearance :
MR MEHUL SHARAD SHAH for Appellant(s) : 1,
None for Defendant(s) : 1 - 4.

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/01/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 10.10.2006 of the Motor Accident Claims Tribunal, Godhra in MAC Petition No.1832 of 2004 awarding compensation of Rs.2,39,500/- to the heirs of Mohanbhai Manabhai Damor who died at the age of 22 years in a motor vehicle accident on 26.6.2004 when the deceased was travelling in a rickshaw insured by the appellant-Insurance Company.

2. Since the rickshaw in question turned turtle and the deceased sustained serious injuries and succumbed to them during the medical treatment in a hospital, the Tribunal had no hesitation in holding the rickshaw driver responsible for the accident in question.

On the question of quantum of compensation, considering the fact that the deceased was a labourer aged 22 years, the Tribunal assessed the income of the deceased at Rs.1500/- per month and prospective income at Rs.2250/- per month. Deducting one-third amount therefrom as the personal expenses of the deceased, the Tribunal assessed the loss of dependency benefit at Rs.1500/- per month = Rs.18,000/- per annum. Multiplier of 11 years was adopted and on that basis the compensation for loss of dependency benefit was worked out at Rs.1,98,000/- (Rs.1500 X 12 X 11). The Tribunal made the award for total compensation of Rs.2,39,500/- under the

following heads:-

Rs.1,98,000/-	loss of dependency benefit
Rs. 15,000/-	pain, shock and suffering;
Rs. 15,000/-	loss of expectation of life;
Rs. 5,000/-	medical expenses;
Rs. 3,000/-	funeral expenses;
Rs. 2,500/-	loss to the estate;
Rs. 1,000/-	transportation charges;
Rs.2,39,500/-	Total

3. Mr Mehul Sharad Shah, learned advocate for the appellant-Insurance Company has submitted that since the younger brother of the deceased was aged 20 years on the date of the accident and the father of the deceased was aged 60 to 63 years on the date of the accident (as stated in the evidence of the brother), the multiplier of 11 years adopted by the Tribunal was very much on the higher side and could not have been more than 5 years. It is also contended that the Tribunal erred in awarding compensation of Rs.15,000/- for pain, shock and suffering although the deceased survived for barely one day after the accident.

4. It is true that in his cross-examination, brother of the deceased aged 20 years stated that their father was aged 62 to 65 years. That deposition was given in the year 2006 and, therefore,

on the date of the accident, the deceased was aged about 60 years. In the claim petition, the age of the father was shown as 50 years. The deceased was the elder son, aged 22 years, and claimant No.2 was the younger son, aged 20 years. Considering the socio-economic strata of the family, it cannot be said with certainty that the age of father, as stated in the cross-examination of the younger son, was the correct age of the father. In that view of the matter, we are inclined to adopt the multiplier of 8 years.

5. Even otherwise, we are of the view that the assessment of income of the deceased made by the Tribunal is very much on the lower side. The minimum wages for a daily wage labourer are Rs.90/- per day and since the deceased was a young man aged 22 years, his income on the date of the accident was required to be assessed at Rs.2700/- per month. Since the deceased was in the prime of his youth and was likely to earn a higher amount over the next 40 to 50 years, it would also be reasonable to assess his prospective future income at Rs.4,000/- per month.

6. It is true that the deceased was an unmarried young man aged 22 years and, therefore, upon his getting married, he would have spent considerable amount on his own family. Even so, in the facts and circumstances of the case, it would be reasonable to proceed on the basis that the deceased would have spent 50% of his income on his father and

younger brother. Hence the dependency benefit would be Rs.2000/- per month i.e. Rs.24,000/- per annum. Adopting the multiplier of 8 years, the compensation for loss of dependency benefit would work out to Rs.24,000 X 8 = Rs.1,92,000/-.

7. As per our recent decision dated 30.11.2006 in First Appeal No. 1069 of 2006, the conventional amount by way of compensation for loss of expectation of life is required to be awarded at Rs.25,000/-.

8. As regards the amount awarded for pain, shock and suffering, the sum awarded by the Tribunal is slightly on the higher side, but the overall amount of compensation awarded by the Tribunal is within the brackets and, therefore, the award under challenge does not call for any interference.

9. The appeal is, therefore, summarily dismissed.

The amount deposited by the appellant-Insurance Company before this Court at the time of filing the appeal shall be transmitted to the Tribunal within one month from today.

10. Since the appeal is dismissed, the civil application for stay is also dismissed.

(M.S. SHAH, J.) (AKIL KURESHI, J.)

zgs/-